

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO A SUMMARY ORDER FILED ON OR AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY FEDERAL RULE OF APPELLATE PROCEDURE 32.1 AND THIS COURT'S LOCAL RULE 32.1.1. WHEN CITING A SUMMARY ORDER IN A DOCUMENT FILED WITH THIS COURT, A PARTY MUST CITE EITHER THE FEDERAL APPENDIX OR AN ELECTRONIC DATABASE (WITH THE NOTATION "SUMMARY ORDER"). A PARTY CITING A SUMMARY ORDER MUST SERVE A COPY OF IT ON ANY PARTY NOT REPRESENTED BY COUNSEL.

At a stated term of the United States Court of Appeals
for the Second Circuit, held at the Daniel Patrick Moynihan
United States Courthouse, 500 Pearl Street, in the City of
New York, on the 6th day of April, two thousand.

PRESENT: DENNIS JACOBS,
Chief Judge,
GUIDO CALABRESI,
DENNY CHIN,
Circuit Judges.

- - - - -X
INTERACTIVE MOTORSPORTS AND
ENTERTAINMENT CORPORATION, RACE CAR
SIMULATORS, INCORPORATED, WILLIAM
DONALDSON, AND PERFECT LINES,
INCORPORATED,

Defendants-Appellants,

-v.-

10-1547-cv

DOLPHIN DIRECT EQUITY PARTNERS, LP,
AND RACE CAR SIMULATION CORPORATION,

Plaintiffs-Appellees.

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2 **FOR APPELLANTS:** Mario DeMarco
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6 **FOR APPELLEES:** Michael Tiger
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10 Partial appeal from the grant of summary judgment for
11 Appellees on all issues by the United States District Court
12 for the Southern District of New York (Berman, J.).
13

14 **UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED**
15 **AND DECREED** that the district court's grant of summary
16 judgment in favor of Appellees and its assessment of damages
17 against Appellants are **AFFIRMED**.
18

19 Appellants appeal the summary judgment ruling that they
20 breached the Asset Purchase, Noncompetition, and Management
21 Agreements (the "Agreements") when they sold and leased SMS
22 and Reactor racecar simulators not owned by Appellees while
23 Appellees' simulators sat idle (*i.e.*, were not being leased
24 out). They also appeal the district court's ruling that
25 William Donaldson is liable in his personal capacity for his
26 breaches of the Noncompetition Agreement. The district
27 court's damage award is also contested. We assume the
28 parties' familiarity with the underlying facts, the
29 procedural history, and the issues presented for review.
30

31 A grant of summary judgment is reviewed *de novo*. Guest
32 v. Hansen, 603 F.3d 15, 20 (2d Cir. 2010). "Summary
33 judgment is warranted when, after construing the evidence in
34 the light most favorable to the non-moving party and drawing
35 all reasonable inferences in its favor, there is no genuine
36 issue as to any material fact." *Id.* Interpretation of the
37 terms of a legally binding agreement, such as a contract,
38 are questions of law and therefore appropriate for summary
39 judgment. See Cent. States S.E. & S.W. Areas Health &
40 Welfare Fund v. Merck-Medco Managed Care, L.L.C., 504 F.3d
41 229, 247 (2d Cir. 2007) ("[W]e review *de novo* a district
42 court's legal conclusions with respect to its interpretation
43 of the terms of a settlement agreement.").
44

45 The record supports the conclusion that, as a matter of
46 law, Appellants breached the Agreements when they leased SMS
47 simulators, sold SMS simulators, and leased Reactor

1 simulators while Appellees' simulators were idle. As to the
2 SMS leases, Appellants advance no argument to the contrary.
3 As to the SMS sales and the Reactor leases, the
4 Noncompetition and Management Agreements both include broad
5 prohibitions on Appellants competing with Appellees in the
6 racecar simulator market. These prohibitions make no
7 distinction between leases and sales, and they make no
8 distinction among types of racecar simulators. A
9 straightforward reading of these Agreements compels the
10 conclusion that they prohibited Appellants from selling SMS
11 simulators and from leasing Reactor simulators while any of
12 Appellees' simulators were idle.

13
14 Appellants argue that, in any event, Donaldson cannot
15 be held liable personally because he signed the
16 Noncompetition Agreement only in his official capacity as an
17 officer for the Appellant corporations. Under New York
18 contract law, "an agent for a disclosed principal will not
19 be personally bound [by the contract] unless there is clear
20 and explicit evidence of the agent's intention to substitute
21 or superadd his personal liability for, or to, that of his
22 principal." Salzman Sign Co. v. Beck, 10 N.Y.2d 63, 67
23 (1961) (internal quotation marks omitted); see also Lerner
24 v. Amalgamated Clothing & Textile Workers Union, 938 F.2d 2,
25 5 (2d Cir. 1991). Donaldson's argument is defeated by the
26 first sentence of the Noncompetition Agreement, which
27 identifies the parties and provides that the contract binds
28 "William Donaldson" (making no reference to any official
29 capacity). Likewise, the signature block at the end of the
30 contract is signed by Donaldson with no title attached to
31 his signature (Donaldson signed all of the other contracts
32 with the title "CEO" below his name). Moreover, given the
33 existence of the simultaneously executed Management
34 Agreement, which functioned as a *corporate* non-compete
35 agreement, the Noncompetition contract would be wholly
36 superfluous unless it was intended to bind Donaldson
37 personally.

38
39 Although Appellants assert that the district court
40 miscalculated the damages it awarded Appellees, Appellants
41 failed to identify evidence or advance a coherent argument
42 in support of this assertion. In any event, Appellants
43 waived this argument by failing to raise it in front of the
44 district court below. The district court's damages
45 calculation is affirmed.

We hereby **AFFIRM** in full the district court's grant of summary judgment in favor of Appellees and its assessment of damages against Appellants.

FOR THE COURT:
CATHERINE O'HAGAN WOLFE, CLERK